IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1049 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEPUTY EXECUTIVE ENGINEER

Versus

SAURASHTRA PORT KAMDAR SANGH

Appearance:

1. Special Civil Application No. 1049 of 1998

MS SEJAL K MANDAVIA for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 27/02/2004

ORAL JUDGEMENT

1. The petitioner has approached this Court to challenge the judgment and award made by the Industrial

Tribunal, Bhavnagar in Reference (IT) No. 212 of 1991. Vide said award the petitioner has been directed to regularize the service of one Mahendrakumar Bhatt (hereinafter referred to as 'the workman') with effect from 26th August, 1988 and to pay him all the incidental benefits. It is also directed to treat the service of the workman as continuous service with effect from 1st August, 1983 for the purpose of working out the retiral benefits.

2. The facts in nutshell can be stated as under :-

2.1. The workman joined the service of the petitioner on 1st August, 1983 as Typist-cum-Clerk on temporary basis. According to the respondent, though the workman had rendered service in said post for considerable time, his service was not being regularized. The workman, therefore, through respondent no. 2 raised the demand for regularization which ultimately came to be referred to the Industrial Tribunal for adjudication by way of aforesaid reference. It may be noted here that originally the reference was filed on behalf of the workman as well as one Dhirajlal Laljibhai, who then worked as Khalasi Fitter with effect from 1st August, 1982. However, it is stated that the said person has left the service of the petitioner and now the petition is restricted to the award passed in respect of the workman alone.

2.2. Before the Tribunal the same averments repeated in the statement of claim, which was contested by the petitioner by filing its written reply. It was contended by the petitioner that it was maintaining a list of seniority of such workers and as and when the concerned post fell vacant, an employee from such list, in accordance with his seniority, was being appointed on permanent basis. It was, therefore, contended by the petitioner that the present reference deserved to be dismissed. At the proceedings both the sides led evidence.

2.3. The Tribunal, on the strength of the material brought before it, came to the conclusion that relief prayed for by the respondent on behalf of the workman was required to be granted and, therefore, it gave direction to the petitioner to regularize the service of the workman from the date of the filing of the reference i.e. 26th August, 1988.

3. Miss Sejal K. Mandavia, learned advocate appearing for the petitioner has submitted that the

petitioner is fully aware of the problem faced by the part-timers/temporary workers rendering services since considerable time. With a view to see that they are accommodated on permanent posts, a seniority list is prepared and the posts are now being filled up in accordance with the said seniority. She has further submitted that so far the workman is concerned, he is at serial no. 24 in the said seniority list and as and when his turn reaches, he will be accommodated on a permanent post on permanent basis. However, on the last occasion of the hearing, she was asked to submit details regarding the wages drawn by the present workman and the basic pay of a permanent employee working in Class-IV. In accordance with the same, today she has produced the detailed statements, which are now ordered to be taken on record. The said statements show that so far the basic pay of a Peon working in Class-IV with effect from 1/1/2004 is Rs.3,345/-. As against that, the workman is receiving salary at the scale of Rs.3050-75-3950-80-4590. According to the statement, the total salary of the workman in January 2004 was Rs.6,670/- p.m.

4. Considering the aforesaid facts, it is clear that even the petitioner is feeling concern about status of the temporary workers and hence it has taken adequate care to see that no injustice is caused to them. With this precise reason seniority list is prepared, which is being operated to fill up the permanent posts as and when they fall vacant by appointing persons from the said list. If the Tribunal's award is allowed to exist, the petitioner will be under constraint to compulsorily give appointment to the workman on a permanent post, who will be stealing march over other 23 persons, who are standing in queue waiting for their turn. Such injustice cannot be allowed to be done to them especially when they are not parties to the proceedings. Further, considering the pay-scale which the present Class-IV employee is being paid and the pay-scale received by the workman, there is hardly any difference between them and for that reason the grievance of the workman also cannot be said to be a justified one. In other words, when there is hardly any difference between the two pay-scales, the workman will now have to wait for his turn. He cannot be allowed to take a jump over other 23 persons listed above him in the seniority list. For this very purpose the Tribunal's award is required to be quashed and set aside.

5. In view of the aforesaid, it is ordered that the judgment and award of the Industrial Tribunal dated 15th October, 1997 passed in Reference (IT) No. 212 of 1991 are quashed and set aside. This petition is allowed.

Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.